Supreme Court, U.S.
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No. 94-12

IN THE

Supreme Court of the United States

October Term, 1994

SEMINOLE TRIBE OF FLORIDA,
Petitioner

v.

STATE OF FLORIDA and LAWTON CHILES, Governor,
Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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ARGUMENT

Respondent agrees that the instant decision is in direct conflict with the opinion of the Eighth Circuit Court of Appeals in *Cheyenne River Sioux Tribe v. South Dakota,* 3 F. 3d 273 (8th Cir. 1993). In the time since the filing of the Seminole Tribe's instant petition for *certiorari*, the Ninth Circuit Court of Appeals has rendered its opinion in Spokane Tribe of Indians v. Washington State, ___ F. 3d ___, 1994 WL 316443 (9th Cir. 1994). The *Spokane* case is in direct conflict with the decision of the 11th Circuit below and explicitly recognizes it as such. *Id.* at *1. The conflicts among the circuits and the several district court cases cited by the petitioner which also show a pronounced split indicate that this is an unanswered question of importance which should be decided by this court.

Having acknowledged that this court should address the question of Congress' power to abrogate the states' 11th Amendment immunity pursuant to the Indian Commerce Clause, Art. I, § 8, cl. 3, the Respondents do not accede to the arguments of the Petitioner. Respondents assert that the court below properly found that Congress lacked the referenced power. In addition, Respondents dispute the Petitioner's second and third issues in its argument. The court below properly limited the holding in *Pennsylvania v. Union Gas,* 491 U.S. 1 (1989), to the Interstate Commerce Clause and it properly rejected the application of the exceptions set forth in *Ex parte Young,* 209 U.S. 123 (1908).

The Petitioner makes reference to the remedy set forth in part V of the opinion of the court below. (Pet. at 6) That portion of the opinion is the subject of a cross-petition

contemporaneously filed with this response.[1] The Ninth Circuit in Spokane addresses this remedy and adds to the conflict in the circuits by disapproving it. *Spokane*, 1994 WL 316443 at *6. The issues raised in the cross-petition add to the need for this court to grant *certiorari* in this case.

Rather than respond to Petitioner's arguments on the merits of this case at this juncture, Respondents intend to reserve the right to raise all substantive arguments in opposition to the Petitioner's claims in their answer brief on the merits.

Respectfully submitted,

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1 These issues are also raised inan original Petition for *Certiorari* filed by the State of Alabama. *State of Alabama v. Poarch Band Indians*, docket number 94-35 (filed July 5, 1994)